FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1348

SIGNAL HILL GOLF COURSE, INC.,

Appellant/Cross-Appellee,

v.

ROBERT WOMACK and TAMMY WOMACK,

Appellees/Cross-Appellants.

On appeal from the Circuit Court for Bay County.
John L. Fishel, II, Judge.

December 30, 2020

MAKAR, J.

After hitting a stellar drive off the elevated tee on the 15th hole at the Signal Hill Golf Course in Panama City, Florida, Robert Womack happily descended the wooden steps off the tee toward his wife in their awaiting golf cart. Unfortunately, he slipped and fell, causing significant injuries that resulted in this litigation, which included a claim by his wife for loss of consortium. The jury returned a verdict an award of $136,000, imposing equal liability (50%) on both Mr. Womack and Signal Hill; no damages were awarded for his wife's loss of consortium claim.

Early on in the litigation, Signal Hill served a proposal for settlement on the wife's loss of consortium claim, which was

deemed rejected because no acceptance was received. *See* Rule 1.442, Fla. R. Civ. P. (2017); §§ 768.79 & 57.104, Fla. Stat. (2017). Signal Hill was thereby entitled to its attorneys' fees and costs incurred in its successful defense of the loss of consortium claim. Signal Hill moved for those attorneys' fees and costs it asserted were incurred in its defense of both claims, seeking a total of $20,418.70 in fees and $5,487.55 in taxable costs. In doing so, it argued that its defense of the husband's negligence claim and its defense of the wife's loss of consortium claim were so interrelated that they were "inextricably intertwined," making it appropriate that it receive the amount of its claimed attorneys' fees and costs incurred in its overall defense of both claims. The trial court rejected Signal Hill's argument but awarded those attorneys' fees and costs it determined were related to defense of the loss of consortium claim.

The issue on appeal is whether Signal Hill is entitled to recover all of its claimed attorneys' fees and costs because the wife's loss of consortium claim was "inextricably intertwined" with her husband's negligence claim, rendering it infeasible to make an allocation between the two claims.

To begin, we conclude—as did the trial court—that no blanket rule exists that automatically deems a loss of consortium claim as necessarily "inextricably intertwined" with the primary liability claim for purposes of awarding attorneys' fees and costs. The Second District directly addressed this argument in *Blanton v. Godwin*, 98 So. 3d 609 (Fla. 2d DCA 2012), a case in which it was asked "to adopt a blanket rule that consortium claims are always so intertwined with the spouse's claim that allocation is never possible." *Id.* at 612. In declining such a rule, the court noted that "if such a rule were adopted, in every case containing a consortium claim, where a defendant or one of the plaintiffs are entitled to fees for one claim, that party would automatically be able to obtain fees for work done on both cases." *Id.* If the blanket rule applied here, for example, Signal Hill would automatically be entitled to all attorneys' fees and costs incurred in its *unsuccessful* defense of the husband's negligence claim, an outcome that makes no sense, which may explain why no Florida court has adopted it. *See, e.g.*, *Conti v. Auchter*, 266 So. 3d 1250, 1252 (Fla. 5th DCA 2019) ("We agree that such a blanket rule is unwise.").

The prevailing approach is to require the party seeking to recover attorneys' fees and costs to shoulder the "burden to allocate them to his consortium claim *or* to show that the issues were so intertwined that allocation is not feasible." *Blanton*, 98 So. 3d at 612 (emphasis added); *see also Shelly L. Hall, M.D., P.A. v. White*, 97 So. 3d 907, 909 (Fla. 1st DCA 2012) (same).[1] As the highlighted term indicates, a movant can choose either to seek an allocation of attorneys' fees and costs to the consortium claim or, alternatively, to prove that allocation is infeasible due to the claims being inextricably intertwined and seek recovery of all of its attorneys' fees and costs. As such, this approach does not foreclose the possibility of proving that the defense of the primary liability claim and the defense of a derivative loss of consortium claim are so interrelated as to make it infeasible to make an allocation of attorneys' fees and costs between the two. *See, e.g.*, *Conti*, 266 So. 3d at 1251 (holding that the trial judge erred in concluding that defense of wife's consortium claim was not inextricably intertwined with husband's permanency claim).[2] That is the path that Signal Hill chose in this case.

On the record presented, it cannot be concluded that Signal Hill met its burden to demonstrate that its defense of the husband's negligence claim and the wife's consortium claim were

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[1] *See also Effective Teleservices, Inc. v. Smith*, 132 So. 3d 335, 339 (Fla. 4th DCA 2014); *Lubkey v. Compuvac Sys., Inc.*, 857 So. 2d 966, 968 (Fla. 2d DCA 2003).

[2] The Fifth District in *Conti* was presented with a different scenario than presented here. In that case, the defendant "successfully defeat[ed] a loss-of-consortium claim by proving a lack of permanency of the plaintiff spouse's injury" such that the two claims were inextricably intertwined based on the evidence presented and fees claimed. 266 So. 3d at 1251. Stated differently, the defeat of the derivative consortium claim flowed entirely from the defeat of the husband's primary liability claim for which fees and costs were sought. In contrast, the husband in this case prevailed on his negligence claim, such that the defeat of the consortium claim was on an unrelated basis.

inextricably intertwined such that an allocation of claimed attorneys' fees and costs was infeasible. Rather, the record demonstrates that the trial judge deemed it feasible to allocate the attorneys' fees and costs sought between the two claims and that it did so after a hearing, argument of counsel, and pre- and post-hearing submissions. Indeed, the trial court says it "carefully reviewed the exhibits, the testimony of the fee expert, and conducted a line-by-line review of Defense counsel's time entries" in its independent determination that allocated $2,661.75[3] of attorneys' fees (including paralegal time) and $1,845.00[4] of taxable costs. Signal Hill argues that even if allocation were possible that these two specific allocations are unsupported by the record. We agree only as to the $845 of taxable costs, which is not fully explained in the order below.

We affirm as to all other issues raised on the appeal and cross-appeal.

AFFIRMED in part, REVERSED in part.

LEWIS and ROBERTS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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[3] This amount includes 14 hours of one attorneys' time (at an initial hourly rate of $158 that was later increased to $165) plus 4.2 hours of paralegal time (at an hourly rate of $85).

[4] This amount includes a total of 4 hours of expert time (at an hourly rate of $250) and $845 of "reasonable taxable costs."

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